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Present: Pereira J. and De Sampayo A.J.

AMERASEKERA *et al. v.* PALANIAPPA *et al.*

109—D. C. Colombo, 36,399.

Document referred to in list added to plaint—Order for production—Civil Procedure Code, ss. 51 and 104—Journal entries.

A document specified in the list of documents added to a plaint in terms of section 51 of the Civil Procedure Code is a document to which "reference is made in the plaint," and an order for the production for inspection by a party of such a document may be obtained by him under section 104.

Per PEREIRA J.—Among documents that a party is not bound to produce are those relating solely to the case of the party himself; but when a document contains matter supporting the title or case of the opposite party, or impeaching the claim of the party required to produce it, it is not protected.

Observations by Pereira J. on how the journal entries in the record of a case should be minuted: When a motion or application is filed, it is not sufficient that reference should be made to it in the journal merely by means of such words as "*Vide* motion (or application) filed." The substance of the motion or application should be recorded so as to convey a correct idea of its contents.

THE facts are set out in the judgment.

A. St. V. Jayewardene, for appellants.

Elliott and *Retnam*, for respondents.

Cur. adv. vult.

September 26, 1913. PEREIRA J.—

This is an appeal from an order of the District Judge on a motion made by the defendants for a notice under section 104 of the Civil Procedure Code on the plaintiffs to produce a certain document referred to in the plaint. The parties appear to have misapprehended the scope of section 104, and the procedings are quite irregular. The section provides for an *ex parte* application for a notice for the production of documents. The written application or memorandum of motion is not expressed with particular precision. It speaks not of a document to which " reference is made in the plaint, " but of a document " relied on by the plaintiffs, " and it is not stated in it whether the document is required for inspection by the defendants or their proctor. However, the notice applied for appears to have been allowed, but the notice taken out was a notice of an entirely different character. It was, in effect, a notice to show cause why a notice under section 104 should not issue. The notice taken out was duly served, and the matter came up for discussion on July 14, 1913. As all the parties interested have acquiesced in the proceedings, I shall say nothing more on the question of irregularity. Having heard counsel the District Judge disallowed the defendants application, his chief reason being that the document in question had not been " pleaded in the plaint, or any affidavit filed by the plaintiffs. " Section 104, however, speaks of documents to which " reference is made in the pleadings or affidavits " of either party ; and the question in the present instance is whether the document in question, that is to say, the agreement dated September 15, 1911, is not a document to which reference is made in the plaint. It appears in the list of documents added to the plaint, in terms of section 51 of the Civil Procedure Code, as documents relied on by the plaintiffs. It has been argued that this list is not a part of the plaint, and that therefore the document cannot be said to be a document referred to in the plaint. I think it is clear that anything added to the plaint becomes part and parcel of the plaint itself, and that inasmuch as the document in question appears in the list added to the plaint, it is, in fact, a document referred to in the plaint. If, as will not I am sure be doubted, a party is entitled to a notice for the production for inspection of a document disclosed in an affidavit filed under section 102 of the Civil Procedure Code in response to a motion for discovery of documents, I fail to see why he should not be entitled to inspection of a document disclosed in the plaint. In a proceeding

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for discovery, the necessity for an affidavit is to ensure a full discovery, and a notice for the production for inspection of a document disclosed in the affidavit would be allowed, not because it is disclosed under the sanction of an oath, but because the document is disclosed as a document that the party making the affidavit is likely to rely on as evidence in the case. There is no reason therefore why the same rule as to notice for production for inspection should not apply where the document is disclosed in the plaint as a document that the plaintiff relies on as evidence in support of his claim.

It is not necessary that I should decide here whether the plaintiffs are entitled to object to produce the document referred to for inspection by the other side, because that question does not, in fact, arise on the present application. The present application is one for notice for production of the document for inspection. It will be time to consider the question under section 106, if under section 105 the plaintiffs object to the production of the document. But as the District Judge has in his order expressed an opinion on the question, and there was some argument on it at the hearing of this appeal, I shall say a few words on it without, however, committing myself to any definite ruling.

In the English Procedure there are several methods of procuring inspection of documents. One of these is almost identical with that set forth in section 104 of our Civil Procedure Code, and it has been stated thus: " Any party to a cause or matter may at any time give notice in writing to any other party to produce for the former's inspection or that of his solicitor any documents referred to in the pleadings or affidavits of his opponent. "

Among documents that a party is not bound to produce are those " relating solely to the case of the party "; that is to say, documents like muniments of title necessary to support one's own title to any property in claim in a case and serving no other purpose. In *Combe v. London Corporation*, [1] a case in which the plaintiff moved for inspection of a document disclosed by the defendant, Knight Bruce V.C. observed: " Where it is consistent with the answer that the document may form the plaintiff's title or part of it, may contain matter supporting the plaintiff's title or the plaintiff's case, or may contain matter impeaching the defence, then I apprehend the document is not protected, nor, I apprehend, is it protected if the character ascribed to it by the defendant is not answered by him with a reasonable and sufficient degree of positiveness and distinctness. " I need say no more on this point, except that this dictum was approved by the Court of Appeal in *Attorney-General v. Emerson*. [2]

I would set aside the order appealed from with costs, and allow the defendant's motion for a notice under section 104 of the Civil Procedure Code.

[1] *1 Y. & C. Ch. Cas. 631.* [2] *10 R. B. D. 191.*

Before parting with the record of this case, I should like to observe that the journal entries as minuted are most unsatisfactory. By themselves they give no conception whatever of the proceedings that resulted in the order appealed from. It must be remembered that, under section 92 of the Civil Procedure Code, the journal is to be the " principal record of the action," and " that every proceeding and order should be minuted." When a motion or application is filed, it is not sufficient that reference should be made to it in the journal merely by means of such words as " *Vide* motion or application." The substance of the motion or application should be recorded so as to convey a correct idea of its contents. The entries in the journal should by themselves give sufficient information of " the events in the cause of the action."

DE SAMPAYO A.J.—I agree.

Set aside.